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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  ROBERT EARLE JOHNSON,

12                  Plaintiff,

13                  v.

14                  SARAH KARIKO, *et al.*,

15                  Defendants.

16                  CASE NO. 3:20-cv-05514-BHS-JRC

17                  ORDER ON PLAINTIFF'S  
18                  MOTION FOR LEAVE TO  
19                  SUPPLEMENT

20                  This matter is before the Court on plaintiff's second motion for leave to supplement his  
21                  claims. *See* Dkt. 36. Defendants oppose the motion. *See* Dkt. 37.

22                  As discussed below, the Court finds that plaintiff is attempting to add a distinct claim to  
23                  his complaint, rather than to supplement his claims. Therefore, the Court denies plaintiff's  
24                  second motion to supplement (Dkt. 36) without prejudice. If plaintiff wishes to amend his  
                complaint, he must file a motion to amend, including a proposed amended complaint.

## BACKGROUND

Plaintiff, a prisoner at the Coyote Ridge Corrections Center (“CRCC”), initiated this matter in June 2020. *See* Dkt. 1. His complaint alleges claims under 42 U.S.C. § 1983 against various Department of Corrections officials and staff. *See* Dkt. 5, at 1–5. As relevant here, plaintiff alleges that a mailing price increase at CRCC violates the First, Fifth, and Fourteenth Amendments. *See generally* Dkt. 5. The Court directed service of the complaint, and defendants have appeared and answered the complaint. *See* Dkts. 13, 28.

Plaintiff previously motioned the Court to supplement his complaint related to his claim about the mailing price increase at CRCC. *See* Dkt. 32. Although plaintiff sought to supplement his claim, the Court found that plaintiff's new allegations regarding the confiscation of legal mail were distinct and stated a new cause of action. *See* Dkt. 35, at 2. Thus, the Court interpreted plaintiff's motion to supplement as a motion to amend his complaint and denied the motion because plaintiff had failed to provide the Court with a copy of his proposed amended complaint. *Id.* at 3.

## DISCUSSION

In his second motion to supplement, plaintiff again states that he seeks to supplement the allegations of his complaint related to his claim under the First and Fourteenth Amendments. *See* Dkt. 36, at 1. Specifically, plaintiff seeks to include allegations and evidence that defendant Turner “continues to violate [plaintiff]’s First and Fourteenth Amendment [rights] to communicate” by denying plaintiff his “rights to receive and read caselaw” pertaining to this lawsuit. *Id.* at 1–2. Attached to his motion, plaintiff provides a proposed supplement to the complaint, along with two proposed exhibits. *See id.* at 10–16.

1       “On motion and reasonable notice, the court may, on just terms, permit a party to serve a  
 2 supplemental pleading setting out any transaction, occurrence, or event that happened after the  
 3 date of the pleading to be supplemented. The court may permit supplementation even though the  
 4 original pleading is defective in stating a claim or defense.” Fed. R. Civ. P. 15(d). Rule 15(d)  
 5 supplementation does not allow the introduction of “separate, distinct and new causes of action.”  
 6 *Planned Parenthood of S. Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997) (internal quotation  
 7 omitted).

8           Here, plaintiff argues that his new allegations are not distinct from the allegations in his  
 9 complaint because they are based on defendant Turner’s alleged continued denial of plaintiff’s  
 10 First Amendment right to communicate. *See* Dkt. 36, at 3. However, in the complaint, plaintiff  
 11 alleges that defendants violated his First and Fourteenth Amendment rights by overcharging him  
 12 the price for mailing documents. *See* Dkt. 5, at 17–18, 31. In contrast, in his proposed  
 13 supplement, plaintiff alleges that defendant Turner confiscated plaintiff’s legal mail and thus  
 14 violated plaintiff’s First and Fourteenth Amendment rights to receive and read caselaw. *See* Dkt.  
 15 36, at 10–12. Although plaintiff’s supplemental allegations arise under the same amendments,  
 16 they are distinct and state a new cause of action.

17           Therefore, the Court again construes plaintiff’s motion to supplement as a motion to  
 18 amend the complaint under Fed. R. Civ. P. 15(a). Although leave to amend under this rule is  
 19 generally freely given, it is important that a plaintiff comply with Local Civil Rule (“LCR”) 15.  
 20 That rule requires the party seeking leave to amend to “attach a copy of the proposed amended  
 21 pleading as an exhibit to the motion[.]” And—

22           [Plaintiff] must indicate on the proposed amended pleading how it differs from the  
 23 pleading that it amends by bracketing or striking through the text to be deleted and  
 underlining or highlighting the text to be added. The proposed amended pleading

1 must not incorporate by reference any part of the preceding pleading, including  
2 exhibits.

3 LCR 15. Although plaintiff has provided a copy of a proposed supplement that references the  
4 complaint (*see* Dkt. 36, at 10–16), he has failed to comply with LCR 15 because he did not  
5 provide the Court with a copy of his proposed amended complaint, which must include all of  
6 plaintiff’s claims against defendants. This requirement is important because any amended  
7 complaint supersedes all previous complaints, and any claims that are not realleged in an  
8 amended complaint are deemed waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1473–74 (9th  
9 Cir. 1997) *overruled in part on other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir.  
10 2012).

11 Therefore, the Court denies the motion to supplement (Dkt. 36) without prejudice. If  
12 plaintiff wishes to pursue his new proposed claim against defendant Turner for allegedly  
13 confiscating his legal mail, he must file a motion for leave to amend his complaint along with a  
14 copy of the proposed amended complaint. *See* LCR 15. The proposed amended complaint must  
15 be legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should  
16 contain the same case number, and it may not incorporate any part of the complaint (Dkt. 5) by  
17 reference. The amended complaint will act as a complete substitute for the original complaint  
18 and not as a supplement. Therefore, the amended complaint must be complete in itself, and all  
19 facts and causes of action alleged in the original complaint that are not alleged in the amended  
20 complaint shall be deemed waived. *Forsyth*, 114 F.3d at 1474.

21 The Clerk is directed to provide plaintiff with the form for filing a 42 U.S.C. § 1983 civil  
22 rights complaint.

1 Dated this 9th day of February, 2021.  
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J. Richard Creatura  
United States Magistrate Judge